

**MEETING SUMMARY REPORT**  
**NDSU Research & Technology Park**  
**1735 NDSU Research Park Drive, Building I**  
**Fargo, ND 58102**

**June 28, 2005**

**Regulatory Enforcement Fairness Hearing**

**Total attendance:** 24

**Congressional attendance** 02

**RegFair Board in attendance** 03

**SBA personnel** 03

**Agencies attending** 11  
(DOL/OSHA; EPA; USDA/FSIS; IRS Taxpayer Advocate; IRS Gov't Liaison; USDA/RD; DOL/Wage & Hour Div.; DOL)

**No. of comments** 04

<b>Small Business Organizations</b>	<b>Point of Contact</b>	<b>Membership</b>
FM Chamber of Commerce	David Martin	1,800
Associated General Contractors of ND	Curt Peterson	475
National Federation of Independent Bus.	John Carlson	3,000
Automobile Dealers Assoc. of ND	Robert Lamp	102
Central North American Trade Corridor	Susan Blikre	?
Minn-Dak Manufacturer's Assoc.	Jeff Dostal	?
North Dakota AFL-CIO	David Kemnitz	20,000
North Dakota Assoc. of Builders (40349 employees)	Doreen Hehlhoff	1,621
North Dakota Assoc. of Realtors	Claus Lembke	1,240
North Dakota Assoc. of Rural Electric Cooperatives/Lineworks	Dennis Hill	324
North Dakota Assoc. of Telecommunications Cooperatives	David Crothers	Left Msg.

North Dakota Beer Wholesalers Assoc.	Janet Seaworth	Left Msg.
North Dakota Grocers Assoc.	Tom Woodmansee	200
North Dakota Implement Dealers Assoc.	Robert Lamp	131
North Dakota Newspaper Assoc.	Roger Bailey	80
North Dakota Petroleum Marketers Assoc.	Russ Hanson	425
North Dakota Pharmacists Assoc.	Patricia Hill	848
North Dakota Propane Gas Assoc.	Russ Hanson	173
ND Ready Mix & Concrete Products Assoc.	David Sethre, PE	90
ND Retail Association	Russ Hanson	339
ND Well Drillers Assoc.	Joseph Tysver	?
City Mayors & governments (ND population -634,366)		156
All city Chambers (total membership not known)		47
All newspapers & media (also, Ed Schultz show was contacted-national program)		197
All participating lenders		434
Economic Developers & Contacts		352
Devils Lake Sioux Tribe	Chairman	5,737
Standing Rock Sioux	Charles W. Murphy, Chairman	3,645
Three Affiliated Tribes-Ft Berthold Reservation	Chairman	?
Turtle Mountain Band of Chippewa	Ken W. Davis, Chairman	Left Msg.
<b>Total</b>		<b>41,416</b>

**Summary:**

**Testifiers:**

## **1. Company A – Confidential. Called-In via (ReadyTalk)**

... we are having some deep (and I feel completely unwarranted) problems with the local Salt Lake **Defense Contract Audit Agency (DCAA)** office.

Through a Phase 2 Small Business Innovation Research (SBIR) with the Air Force Research Lab, we have been able to create self assembling nanostructures which can be used to make highly conductive polymers, composites, coatings, paints, adhesives and gaskets. These materials in turn, provide the highest known levels of electromagnetic properties, such as lightning strike protection and electromagnetic shielding protection of any other polymer or composite based material, and are several orders of magnitude more conductive than the closest competing technology. Personally having invested over 20 years in the development of the technology, I experience no problems in the technology areas with respect to government regulation or oversight.

But as a small start up business, we have been told with a straight face by several folks that we are expected to know the entire Federal Acquisition Regulation (FAR), and that ignorance of any of the pages of referenced FAR sections on the contract is no excuse. Furthermore, the local DCAA office should learn that "small business" is indeed that by definition, and they will most often not find problems large enough to warrant their investigations and numerous repeated audits. They have much bigger problems to resolve than will be found in repeated audits of honest and struggling small businessmen and technologists.

I would also like to express concern about one area of regulation with respect to the SBIR program and the FAR. The express intent of the SBIR program is to create dual use commercialization opportunities for emerging technologies. But the problem lies in that many of these technologies are initially funded by the SBIR program; but the FAR does not permit the use of any of these funds for the development of any marketing, such as technical conferences, networking and trade shows. In order for an emerging technology to reach the commercial sector, there needs to be some sort of mechanism to allow at least an initial nominal amount of outreach and commercial sector networking. Currently, all such expenditures are not allowed. For technologies whose infancy is in the SBIR program, there is a requirement, but no allowable method, to build a bridge to the commercial sector.

## **2. Jerome Burkel – Burkel Grain Services, Inc.**

**SBA – Disaster Office:** The comments I have concern Economic Injury Disaster Loan (EIDL) loan application.

We applied for EIDL loan on May 12, 2005 send to the Atlanta office. Loan officer Charles Hunnewell returned our application with a request for more information, tax returns and financial statements from 3 shareholders that own 16% each. I called him and explained that my 3 sisters inherited these shares from my father in 1984. He said that SBA would require this information if they owned 1% of the stock in the corporation. These 3 share holders do not, nor have they ever derived any financial benefit from the corporation. They have no input into the everyday operation and management of the business and are not responsible for any of the obligations of the business. I, Jerome Burke personally guarantee all obligations for Burkel Grain Service Inc. This is the same as I have on previous SBA loans. We called Toni Merdan of Congressman Colin Peterson office for help and were instructed to return the application to a Mr. Mike Cottle senior Supervisory loan officer for review of this file. The application was returned on June 12, 2005 by Rodney Johnson of SBA Atlanta stating that this a requirement on family corporations. We do not know if Mr. Cottle seen or reviewed the application. I do not believe that there are different rules because the shareholders are being related. Corporations are distinct entities controlled by the shareholder having controlling percentage of the corporation. This is the manner that the IRS and the courts view a corporation. These are the reasons I do not believe we and other companies are being treated fairly when we apply for SBA programs. The financial statement provided

by SBA states in the header each stockholder owning 20% or more of the voting stock. The small businesses of America are usually owned by family, and are often structured as a formal corporation. Is this a way to disqualify small businesses the benefit and assistance of government programs?

### **3. Company B – Confidential (Read by Board Member)**

**EPA:** Comments and input addressed three primary areas of concern: regulatory compliance and enforcement issues for erosion and sediment control for the National Pollution Discharge Elimination System (NPDES); disproportional penalties affecting small businesses; and burden of proof.

### **4. Karl Frigaard – Northwest Community Action Agency**

The issues I have seen with SBA economic injury loans and standard SBA loans are as follows:

Turn around time is slow on economic injury loans for businesses that are already having problems meeting their business's obligations. These economic injuries to the businesses that I worked have with are directly related to weather and poor farm economy caused by weather conditions. These conditions affect the farmers ability to purchase and pay for goods and services on time leaving many small businesses with large accounts receivable or delays in starting projects with their farmer customers. The weather has been hard on heating and cooling contractors throughout the region because of unusual wet and cold weather patterns in the spring and summer cutting into their summer cooling and air conditioning business. Second thing I have noticed is the farmers are slow to pay and often put off work on their homes, shops and farm equipment completely.

SBA is not considering what the cost of time means to a business in distress. The business is experiencing overdrafts, late charges, finance charges and finally calls from vendors wanting to be paid for goods they provided these businesses. In one case this spring 2005 in SBA Atlanta office was dealing with an economic injury loan informed the hardware store in Kittson County they would be receiving a \$93,000 loan, the next week it changed to a \$83,000 loan, the following week it was down to a \$73,000 loan and now finally two months and two weeks later they are told the loan will be \$63,000 but still have not received the loan funds and still are having to tell their vendors what story this week "as to how much they will be receiving and how soon they can expect to be paid all along the finance charges are ringing up!"